

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

| | | |
|---------------------------------|---|--|
| GLOBAL EQUITY MANAGEMENT |) | |
| (SA) PTY. LTD., |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| <hr/> AIRBNB, Inc. |) | Civil Action No. 2:15-cv-01700-RWS-RSP |
| |) | |
| <hr/> ALIBABA.COM, INC., et al. |) | Civil Action No. 2:15-cv-01702-RWS-RSP |
| |) | |
| Defendants |) | JURY TRIAL DEMANDED |

PLAINTINFF'S SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Global Equity Management (SA) Pt. Ltd. ("GEMSA") files this Second Amended Complaint and demand for jury trial seeking relief from patent infringement by Alibaba.com, Inc., Alibaba.com Singapore E-commerce Private Ltd., and Alibaba Group Holding, Ltd. (collectively referred to as "Alibaba"), alleging as follows:¹

THE PARTIES

1. Plaintiff GEMSA is a foreign corporation organized under the laws of Australia, with its principal place of business located 458 Morphett Road, Warradale, South Australia 5046.
2. Upon information and belief, Alibaba.com, Inc. is a corporation organized and existing under the laws of Delaware, with a place of business at 3945 Freedom Cir. #600, Santa Clara, CA 95054, and a registered agent for service of process at National Registered Agents, Inc., 818 W. Seventh St., Los Angeles, CA 90017. Upon information and belief, Alibaba sells and offers to sell products and services throughout the United States, including in this judicial district, and

¹ GEMSA amends its complaint pursuant to the Federal Rules of Civil Procedure, Rule 15(a)(1), as this amendment is made within 21 days of the filing of Alibaba's Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue or, in the Alternative, to Transfer (Doc. No. 13).

introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States. Alibaba.com, Inc. entered an appearance on or about March 3, 2016 and may be served through counsel by serving J. Mark Mann, MANN TINDEL THOMPSON, 300 West Main, Henderson, Texas 75652 ay mark@themannfirm.com and Carey R. Ramos, QUINN EMANUEL URQUHART& SULLIVAN, LLP, 51 Madison Avenue, 22nd Floor, New York, New York 10010 at careyramos@quinnemanuel.com.

3. Upon information and belief, Alibaba.com Singapore E-commerce Private Ltd. is a company organized and existing under the laws of Singapore, with a registered address at 10 Collyer Quay # 10-01, Ocean Financial Centre, Singapore 049315 and, upon information and belief, can be served at that address by mail, agent, or letters rogatory. Upon information and belief, Alibaba.com Singapore E-commerce Private Ltd. sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States. Alibaba.com Singapore E-commerce Private Ltd. entered an appearance on or about March 3, 2016 and may be served through counsel by serving J. Mark Mann, MANN TINDEL THOMPSON, 300 West Main, Henderson, Texas 75652 ay mark@themannfirm.com and Carey R. Ramos, QUINN EMANUEL URQUHART& SULLIVAN, LLP, 51 Madison Avenue, 22nd Floor, New York, New York 10010 at careyramos@quinnemanuel.com.

4. Upon information and belief, Alibaba Group Holding Ltd. is a holding company organized and existing under the laws of the Cayman Islands, with a place of business at 26/F Tower One, Times Square, 1 Matheson Street, Causeway Bay, Hong Kong and a registered agent for service

of process at Corporation Service Company, 1180 Avenue of the Americas, Suite 210, New York, New York 10036. Upon information and belief, Alibaba Group Holding Ltd. sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 et. seq. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

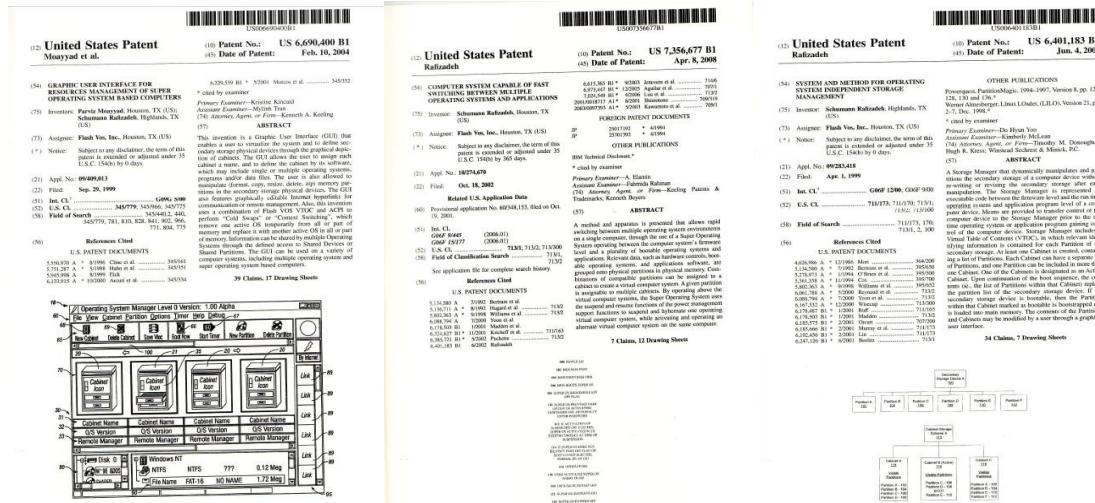
4. This Court has personal jurisdiction over each Defendant Alibaba because: Alibaba is present within or has minimum contacts within the State of Texas and this judicial district; Defendants have purposefully availed themselves of the privileges of conducting business in the State of Texas and in this judicial district; Defendants each regularly conduct business within the State of Texas and within this judicial district; and Plaintiff's cause of action arises directly from each Defendants' business contacts and other activities in the State of Texas and in this judicial district.

5. Upon information and belief, Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in Texas.

Background of the Invention

6. Flash Vos, Inc. (FVOS), a predecessor of GEMSA, was established in 1997 in Houston, Texas, to develop platform independent information processing in complex environments with multiple systems and multiple operating environments. FVOS product development created and produced the first Virtual System OS (VOS) and the first Super Operating System (SOS) that were well ahead of times. The SOS for the first time allowed multiple operating environment to co-exist on the same platform with their own independent filesystems.

7. Flash Vos, Inc. moved the computer industry a quantum leap forwarded in the late 90's when it invented Systems Virtualization and was awarded the patents US6690400 ('400), US7356677 ('677) and US6401183 ('183).



8. Technology Experts recognized the Virtualization innovations as key technology inventions. Before the SOS, computers were only able to use a single operating system and virtualization of computers based on storage was not possible. The technology has been cited numerous times by the patent office as relevant prior art for other later patent applications.

| | | | | |
|-------------|-------------|-------------|---|---|
| US7996687 | 31 Oct 2008 | 9 Aug 2011 | International Business Machines Corporation | Product for providing a scalable trusted platform module in a hypervisor environment |
| US8010513 | 28 May 2010 | 30 Aug 2011 | Brocade Communications Systems, Inc. | Use of server instances and processing elements to define a server |
| US8091042 * | 15 Nov 2001 | 3 Jan 2012 | Siebel Systems, Inc. | Apparatus and method for displaying selectable icons in a toolbar for a user interface |
| US8150972 | 10 Feb 2011 | 3 Apr 2012 | Adaptive Computing Enterprises, Inc. | System and method of providing reservation masks within a compute environment |
| US8176094 | 1 Jun 2009 | 8 May 2012 | Novell, Inc. | System and method for efficiently building virtual appliances in a hosted environment |
| US8209288 | 1 Jun 2009 | 26 Jun 2012 | Novell, Inc. | System and method for inspecting a virtual appliance runtime environment |
| US8209495 | 28 Mar 2011 | 26 Jun 2012 | Hitachi, Ltd. | Storage management method and storage management system |
| US8214842 * | 27 Feb 2009 | 3 Jul 2012 | International Business Machines Corporation | Visualization-centric performance-based volume allocation |
| US8321871 | 17 Jun 2005 | 27 Nov 2012 | Adaptive Computing Enterprises, Inc. | System and method of using transaction IDS for managing reservations of compute resources within a compute environment |
| US8386721 | 21 Nov 2008 | 26 Feb 2013 | Hitachi, Ltd. | Storage having logical partitioning capability and systems which include the storage |
| US8412909 * | 7 Apr 2010 | 2 Apr 2013 | Samsung Electronics Co., Ltd. | Defining and changing spare space and user space in a storage apparatus |
| US8413155 | 11 Mar 2005 | 2 Apr 2013 | Adaptive Computing Enterprises, Inc. | System and method for a self-optimizing reservation in time of compute resources |
| US8418186 | 27 Jun 2011 | 9 Apr 2013 | Adaptive Computing Enterprises, Inc. | System and method of co-allocating a reservation spanning different compute resources types |
| US8423884 | 8 Dec 2011 | 16 Apr 2013 | Institute For Information Industry | System, method and computer readable storage medium for storing the method for operating graphic user interface |
| US8499276 * | 28 Dec 2006 | 30 Jul 2013 | Ca, Inc. | Multi-platform graphical user interface |
| US8516217 * | 27 Mar 2009 | 20 Aug 2013 | International Business Machines Corporation | Managing a logically partitioned computing system through a virtual file system |
| US8543998 | 11 Feb 2009 | 24 Sep 2013 | Oracle International Corporation | System and method for building virtual appliances using a repository metadata server and a dependency resolution service |
| US8544016 | 1 Jun 2009 | 24 Sep 2013 | Oracle International Corporation | Rebuilding a first and second image based on software components having earlier versions for one or more appliances and performing a first and second integration test for each respective image in a runtime environment |
| | | | Adaptive | |

REFERENCED BY

| Citing Patent | Filing date | Publication date | Applicant | Title |
|---------------|-------------|------------------|---|---|
| US6971002 * | 9 Aug 2001 | 29 Nov 2005 | International Business Machines Corporation | Method, system, and product for booting a partition using one of multiple, different firmware images without rebooting other partitions |
| US7062629 * | 15 Feb 2005 | 13 Jun 2006 | Hitachi, Ltd. | Apparatus and method for partitioning and managing subsystem logics |
| US7065627 * | 25 Mar 2002 | 20 Jun 2006 | International Business Machines Corporation | Method and system for providing an event driven image for a boot record |
| US7069408 * | 9 Dec 2003 | 27 Jun 2006 | Hitachi, Ltd. | Apparatus and method for partitioning and managing subsystem logics |
| US7103847 * | 18 Jul 2002 | 5 Sep 2006 | International Business Machines Corporation | Method and system for monitoring the use of a resource in a processing system |
| US7127585 | 23 Jun 2004 | 24 Oct 2006 | Hitachi, Ltd. | Storage having logical partitioning capability and systems which include the storage |
| US7146569 * | 10 Oct 2002 | 5 Dec 2006 | International Business Machines Corporation | Method, apparatus, and program for visual representation of an address space |
| US7181577 | 19 Feb 2004 | 20 Feb 2007 | Hitachi, Ltd. | Storage having logical partitioning capability and systems which include the storage |
| US7185142 | 20 May 2004 | 27 Feb 2007 | Hitachi, Ltd. | Storage management method and storage management system |
| US7287129 | 17 May 2006 | 23 Oct 2007 | Hitachi, Ltd. | Storage management method and storage management system |
| US7317175 | 24 Jun 2004 | 8 Jan 2008 | Jere F. Irwin | User interface for configuring and controlling an array of heater elements |
| US7346585 * | 28 Feb 2003 | 18 Mar 2008 | Microsoft Corporation | Computer software and services license processing method and system |
| US7356770 * | 8 Nov 2005 | 8 Apr 2008 | Cluster Resources, Inc. | System and method of graphically managing and monitoring a compute environment |
| US7363455 | 15 Feb 2005 | 22 Apr 2008 | Hitachi, Ltd. | Apparatus and method for partitioning and managing subsystem logics |
| US7415578 | 20 Mar 2007 | 19 Aug 2008 | Hitachi, Ltd. | Storage management method and storage management system |
| US7478246 * | 29 Jul 2004 | 13 Jan 2009 | International Business Machines Corporation | Method for providing a scalable trusted platform module in a hypervisor environment |
| US7546426 | 21 Dec 2006 | 9 Jun 2009 | Hitachi, Ltd. | Storage having a logical partitioning capability and systems which include the storage |
| US7590648 * | 27 May 2005 | 15 Sep 2009 | Brocade Communications Systems, Inc. | Template-based development of servers |
| US7624283 | 13 Feb 2006 | 24 Nov 2009 | International Business Machines Corporation | Protocol for trusted platform module recovery through context checkpointing |
| US7917704 | 25 Jul 2008 | 29 Mar 2011 | Hitachi, Ltd. | Storage management method and storage management system |

9. Additionally, GEMSA has continued supporting these technologies advances and has helped the achievement of additional patents awarded in China which include:

[CN201010149051 Firmware-based flash memory array management device and method independent of operating system](#)

[CN200810204083 Operating system switching method based on expandable firmware interface](#)

[CN200810200121 Virtual platform system based on firmware](#)

[CN200710132636 Perspective communication method between super operating system and its intermedium](#)

[CN200910197256 Cross-platform and cross-processor method based on extensible firmware interface and device](#)

10. These GEMSA creative achievements not only revolutionized the development of virtualization technology for support of multiple operating systems but also helped the development of internet advertising and information accessing from multiple data sources.

11. One of the key features of these innovations is the method of accessing additional relevant information from the GUI by simply clicking on the information links positioned on the right hand side of the GUI.

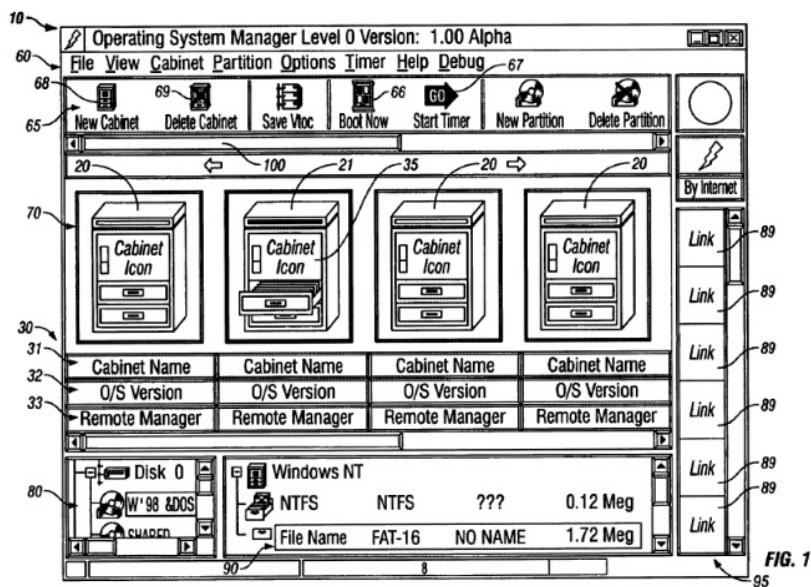


Fig.1 of GEMSA '400 GUI Patent

12. These GUI innovations include Menu Bars and Links are marked (65, 89, etc.) and shown in the Fig.1 of the '400 patent and one embodiment of this invention is further illustrated as figure 8 in '677 patent.

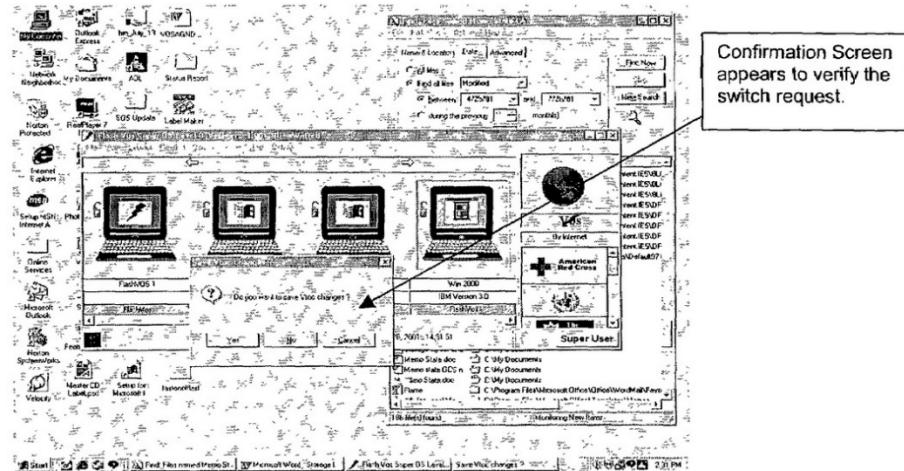
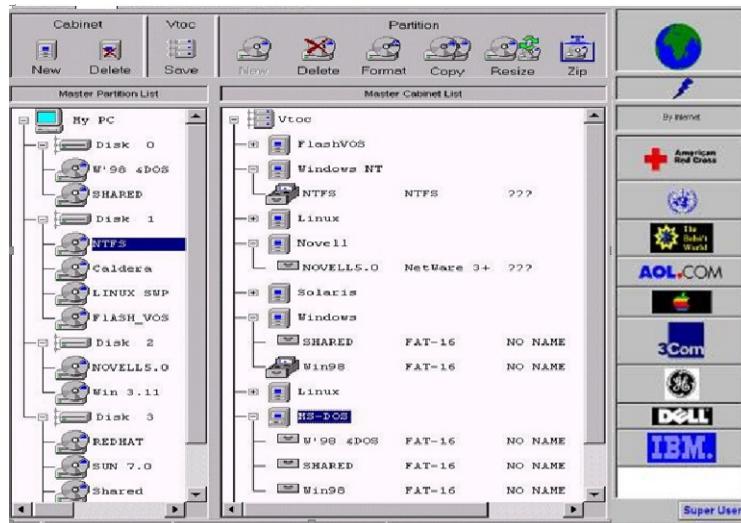


Figure 8 of GEMSA US 7356677 B1 Patent

13. Figure below is another instance of GEMSA GUI from copyrighted SOS User's Guide.



COUNT 1: INFRINGEMENT OF THE '400 PATENT

14. Plaintiff re-alleges paragraphs 1-13 in its entirety.

15. On February 10, 2004, United States Patent No. 6,690,400 ("the '400 patent") entitled "Graphic User Interface for Resources Management of Super Operating System Based Computers" was duly and legally issued by the United States Patent and Trademark Office. GEMSA owns the '400 patent by assignment. (the '400 patent is attached as Ex. A)

16. Alibaba uses a website with a graphical user interface ("GUI") for the administration and management of www.alibaba.com that infringes one or more claims of the '400 patent, including at least claims 1, 16 and 28.

17. In doing so Alibaba infringes at least claims 1, 16 and 28 of the '400 patent, literally or under the doctrine of equivalents. Alibaba directly infringes by using the GUI for the administration and management of alibaba.com. Alibaba induces infringement by consumers and advertisers by encouraging them to use the GUI. Alibaba contributorily infringes by providing the GUI to consumers and advertisers.

18. On information and belief, Alibaba will continue to infringe at least claims 1, 16, and 28 of the '400 patent unless and until it is enjoined by this Court.

19. Alibaba has caused and will continue to cause GEMSA irreparable injury and damage by infringing at least claims 1, 16 and 28 of the '400 patent. GEMSA will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Alibaba is enjoined from infringing at least claims 1, 16 and 28 of the '400 patent.

COUNT 2: INFRINGEMENT OF THE '677 PATENT

20. Plaintiff re-alleges paragraphs 1-13 in its entirety.

21. On April 8, 2008, United States Patent No. 7,356,677 ("the '677 patent") entitled "Computer System Capable of Fast Switching Between Multiple Operating Systems and Applications" was duly and legally issued by the United States Patent and Trademark Office. GEMSA owns the '677 patent by assignment. (the '677 patent is attached as Ex. B)

22. Alibaba uses a website with a graphical user interface ("GUI") for the administration and management of www.alibaba.com that infringes at least claims 1, 3 and 6 of the '677 patent.

23. In doing so, Alibaba infringes at least claims 1, 3 and 6 of the '677 patent, literally or under the doctrine of equivalents. Alibaba directly infringes by using the GUI for the administration and management of alibaba.com. Alibaba induces infringement by consumers and advertisers by encouraging them to use the GUI. Alibaba contributorily infringes by providing the GUI to consumers and advertisers.

24. On information and belief, Alibaba will continue to infringe at least claims 1, 3 and 6 of the '677 patent unless and until it is enjoined by this Court.

25. Alibaba has caused and will continue to cause GEMSA irreparable injury and damage by infringing at least claims 1, 3 and 6 of the '677 patent. GEMSA will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Alibaba is enjoined from infringing at least claims 1, 3 and 6 of the '677 patent.

PRAYER FOR RELIEF

WHEREFORE, GEMSA respectfully requests that this Court:

1. Enter judgment that Alibaba has infringed the '400 patent;
2. Enter an order permanently enjoining Alibaba and its officers, agents, employees, Attorneys, and all persons in active conceit or participation with any of them, from infringing the '400 patent;
3. Award GEMSA damages in an amount sufficient to compensate it for Alibaba's infringement of the '400 patent, together with prejudgment and post-judgment interest and costs under 35 U.S.C. § 284;
4. Enter judgment that Alibaba has infringed the '677 patent;
5. Enter an order permanently enjoining Alibaba and its officers, agents, employees, Attorneys, and all persons in active conceit or participation with any of them, from infringing the '677 patent;

6. Award GEMSA damages in an amount sufficient to compensate it for Alibaba's infringement of the '677 patent, together with prejudgment and post-judgment interest and costs under 35 U.S.C. § 284;
7. Award GEMSA an accounting for acts of infringement not presented at trial and an award by the Court of additional damage for any such acts of infringement;
8. Declare this case to be "exceptional" under 35 U.S.C. § 285 and award GEMSA its attorneys' fees, expenses, and costs incurred in this action; and,
9. Award GEMSA such other and further relief as this Court deems just and proper.

JURY DEMAND

GEMSA hereby requests a trial by jury on issues so triable by right.

Respectfully submitted,

Ramey & Schwaller, LLP

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Attorneys for GEMSA

CERTIFICATE OF CONFERENCE

Pursuant to Local Rules, William Ramey, counsel for Plaintiff Global Equity Management (SA) Pty. Ltd., conferred with Carey Ramos, counsel for Alibaba by e-mail on March 9, 2016, regarding the fact that Plaintiff would be filing this second amended complaint but no response was received.

/s/ William P. Ramey, III

William P. Ramey, III

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that all counsel of record who have appeared in this case are being served today with a copy of the foregoing via the Court's CM/ECF system.

/s/ William P. Ramey, III

William P. Ramey, III